

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Gustavo Hidalgo Cordoba
302 Mound Ave
Mankato, MN 56001

Plaintiff,

v.

Alejandro Mayorkas, Director
United States Citizenship
& Immigration Services,
Department of Homeland Security
20 Massachusetts Ave N
Room 5003
Washington D.C., 20529

Sharon Dooley, Field Office Director
United States Citizenship
& Immigration Services
2901 Metro Drive #100
Bloomington, MN 55425

John Morton, Director
United States Immigration and Customs
Enforcement,
500 12th St SW
Washington, D.C. 20536

Janet Napolitano, Secretary
United States Department of Homeland
Security
Washington, D.C. 20528

Jill Eggleston, Director
FOIA Operations
United States Department of Homeland
Security

Case Number 13-940

COMPLAINT FOR
INJUNCTIVE RELIEF

National Records Center)
P.O. Box 648010)
Lee's Summit, Missouri 64064-8010)
)
Catrina Pavlik-Keenan, FOIA Officer)
FOIA Operations)
United States Immigration and Customs)
Enforcement)
500 12th St SW,)
MS 5009,)
Washington, D.C. 20536-5009)
)
Defendants.)

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from Plaintiff by Defendant Department of Homeland Security and its components, the U.S. Citizenship & Immigration Services and the U.S. Immigration and Customs Enforcement.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction and personal jurisdiction over the parties pursuant to 5 U.S.C § 552 (a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies within this district under 5 U.S.C. § 552 (a)(4)(B).

The Parties

3. Plaintiff Gustavo Hidalgo is a Mexican citizen who has resided in the State of Minnesota since 2001. Mr. Hidalgo is the requester of withheld immigration records which primarily concern his experiences with immigration in Minnesota and at San Luis, Arizona Port of Entry, United States. Mr. Hidalgo has been married to Maria Hidalgo, a United States citizen, since November 28, 2011 and together they are raising three USC children, ages 7, 2, and 6 months old. The second child suffers from a severe urinary reflux disease named bilateral Vesicoureteral reflux.

4. Defendant U.S. Citizenship & Immigration Services (CIS) is a bureau within the Department of Homeland Security, the federal agency of the United States which has possession and control over the records the Plaintiff seeks. Defendant Immigration and Customs Enforcement is also a bureau within the Department of Homeland Security, the federal agency which has possession and control over the records the Plaintiff seeks. On March 1, 2003, the Immigration and Naturalization Service (INS) dissolved and certain functions were transferred to the three new bureaus known as the CIS, ICE and CBP under the Department of Homeland Security.

The Plaintiff's Tenuous Immigration Position

5. After a harrowing and intimidating experience with armed immigration agents in the middle of the night on February 11, 2001, INS Officer Renata P. De La Rosa, St. Luis, Arizona Port of Entry served an Order of Expedited Removal on Plaintiff. This Removal Order allowed the I.N.S. to deport a foreign national without due process or a hearing, barring him from

returning to the U.S.A. for five years, if the foreign national falsely admitted to be a U.S. Citizen upon entry into the U.S.A. A couple of months later, Mr. Hidalgo returned to the United States and has resided in Minnesota since that time. After his first marriage dissolved, he met his beloved wife Maria in 2007 and since then, they have gotten married, are raising three young USC children, and have opened up their own restaurant, Las Fronteras Authentic Mexican Grill & Cantina in North Mankato, employing more than 10 local residents.

6. On July 6, 2012, ICE Officer John W. Mock had Mr. Hidalgo arrested, detained, and then issued a Decision to Reinstate the 2001 Expedited Removal Order against Mr. Hidalgo. ICE then released Plaintiff on an Order of Supervision and ordered him to leave the country before November 15, 2012. ICE has since agreed to extend this deadline until May 15, 2013 due to humanitarian issues within the Plaintiff's family.

7. Because of the Expedited Removal Order and its subsequent Reinstatement, Mr. Hidalgo has been permanently barred from ever having an immigration hearing where he could apply for the ability to live in the United States and where he could subpoena the INS officers who effectuated his Expedited Removal order in 2001. He is also barred from returning to the U.S.A. His only avenue for relief is to apply for prosecutorial discretion which, if granted, is granted in small segments of time.

Defendant CIS' Decision to Withhold Records from Plaintiff under the Freedom of Information Act, 5 U.S.C. § 552

8. On July 24, 2012, Mr. Hidalgo filed a request for his immigration records with the CIS, which was assigned #NRC 2012068705. On October 24, 2012, the Defendant CIS provided a response, providing 123 pages in their entirety, 33 pages in part, and then withheld 48 pages in full. The CIS also sent some ICE records to Defendant ICE for their consideration and response to the FOIA request.

9. On October 31, 2012, Mr. Hidalgo timely appealed Defendant CIS' decision to withhold 48 pages. On November 26, 2012, the Defendant CIS responded to the appeal by releasing partial information on 3 additional pages and continuing to withhold up to 48 pages in their entirety.

Defendant ICE's Decision to Withhold Records from Plaintiff

10. On July 11, 2012, Plaintiff independently requested a copy of his immigration records under the Freedom of Information Act, 5 U.S.C. § 552, from Defendant ICE, which responded on August 3, 2012 that all records relative to Plaintiff were being held by Defendant CIS. This was assigned # 2012 FOIA 20067. Defendant ICE forwarded Plaintiff's request for records to Defendant CIS.

11. On February 11, 2013, Defendant ICE responded to Plaintiff's request for his immigration records under the FOIA on July 11, 2012, ICE case number 2013 FOIA 10606 and to CIS FOIA Request #NRC 2012068705 withholding portions of information on forty pages from Plaintiff's immigration file held by Defendant ICE.

12. On March 6, 2013, Plaintiff appealed Defendant ICE's decision dated February 11, 2013 to withhold information from request No. 2013 FOIA 10606 and #NRC 2012068705, assigning it Number OPLA13-738. This appeal was received on March 13, 2013. On April 16, 2013, Defendant ICE notified the Plaintiff that it had reviewed his appeal, and was remanding Plaintiff's request back to the ICE FOIA office.

13. Paragraphs 1-12 above are hereby incorporated by reference as if set forth fully herein.

Count I

Violation of the FOIA: FAILURE to Comply with Statutory Deadlines and Requirements

14. Defendant CIS and Defendant ICE have wrongfully failed to comply with Mr. Hidalgo's request for a copy of his records by improperly withholding records in violation of the Freedom of Information Act, including the deadlines imposed within FOIA.

15. Plaintiff has a statutory right to the records he seeks and there is no legal basis for Defendants' refusal to disclose them.

16. The Plaintiff has exhausted all administrative remedies with respect to the request for his files under the FOIA.

17. The Plaintiff is entitled to injunctive relief compelling the release and disclosure of the requested agency records.

Requested Relief

WHEREFORE, the Plaintiff prays that this Court:

1. Declare that Defendants' refusal to disclose the records requested by Plaintiff is unlawful;
2. Order Defendant CIS to disclose the requested records in their entireties to and make copies available to Plaintiffs within ten business days of the Court's Order in this matter;
3. Order Defendant ICE to disclose the requested records in their entireties and to make copies available to the Plaintiff within ten business days of the Court's Order in this matter ;
4. Order that this case be expedited;
5. Award Plaintiff his costs and reasonable attorney's fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
6. Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,



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